

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISIONUNITED STATES OF AMERICA)
)
v.) CR. NO. 2:05cr137-F
)
GEORGE DAVID SALUM III)GOVERNMENT'S AMENDED RESPONSE TO DEFENDANT'S
MOTION PURSUANT TO F.R.E. 404(b) FOR NOTICE BY THE
GOVERNMENT OF ITS INTENTION TO RELY UPON OTHER
CRIMES, WRONGS, ACTS AND MISCONDUCT EVIDENCE

COMES NOW the United States of America, by and through its attorneys, Gregory R. Miller, United States Attorney for the Northern District of Florida, and the undersigned Assistant United States Attorney, and files this amended response to Defendant's motion for Fed. R. Evid. 404(b) notice. (Doc. 41, 43). Fed. R. Evid. 404(b); *United States v. Lampley*, 68 F.3d 1296 (11th Cir. 1995)(Government must only provide notice of the "general nature" of the extrinsic act evidence); *United States v. Perez-Tosta*, 36 F.3d 1552 (11th Cir. 1994)(policy of pre-trial notice provision is to reduce surprise and promote early resolution of issues relating to admissibility of such evidence).

During pretrial preparation of government witness Richard E. Moore, Jr. on the afternoon of October 31, 2005, the United States learned that during approximately the last two weeks of October 2005, Defendant SALUM contacted government witness Moore. SALUM urged government witness Moore to testify under oath to facts concerning Defendant SALUM's production of the personnel file of Raymond David DeJohn, Jr., which are not truthful, in order to make government witness Moore's testimony more in accord with what Defendant SALUM described as his statement to Montgomery Police Department (MPD) Internal Affairs officers.

It is the Government's position that consistent with the law in the Eleventh Circuit, this constitutes evidence concerning an attempt to influence a witness which is relevant in showing consciousness of guilt. *United States v. Hammond*, 781 F.2d 1536, 1540 (11th Cir. 1986). See also *United States v. Gonzalez*, 703 F.2d 1222, 1223 (11th Cir. 1983); *United States v. Bright*, 630 F.2d 804, 821 (11th Cir. 1980); *Rich v. United States*, 384 F.2d 887, 888 (5th Cir. 1967). Therefore, Fed. R. Evid. 404(b) notice is arguably not required.

In an abundance of caution, however, the Government notices the defendant of its intent to adduce testimony about his attempt to influence this witness. This filing constitutes reasonable pretrial notice of the intent of the United States, since reasonable pretrial preparation would not have revealed the testimony earlier than the witness's revelation during trial preparation. *United States v. Perez-Tosta*, 36 F.2d at 1560-62.

RESPECTFULLY SUBMITTED this 1ST day of November, 2005.

GREGORY R. MILLER
United States Attorney

/s/Dixie A. Morrow
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CERTIFICATE OF SERVICE

____ I hereby certify that I have this date served a copy of the foregoing GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION PURSUANT TO F.R.E. 404(B) upon the defendant by electronic filing with and noticing by the Clerk of Court, and by transmitting an additional facsimile copy of same to the defendant's counsel of record: Julian L. McPhillips, Jr., McPHILLIPS SHINBAUM LLP, Post Office Box 64, Montgomery, Alabama 36101.

THIS 1st day of November, 2005.

/s/Dixie A. Morrow

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